

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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SEAN CARROLL,

Index No. 301048/07

Plaintiff(s),

VERIFIED ANSWER

-against-

ABRAHAM MATHEWS,

Defendant(s).

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Defendant(s), ABRAHAM MATHEWS, by his attorneys STOCKSCHLAEDER, MCDONALD & SULES, P.C., ESQS., answering the Complaint of plaintiff(s) upon information and belief, respectfully shows to this Court and alleges:

1. Defendant(s) deny having knowledge or information sufficient thereof to form a belief as to the truth of the allegations contained in paragraph "1" of the plaintiff(s) Complaint.

2. Defendant(s) admit the allegations contained in paragraph "2" of the plaintiff's Complaint.

3. Defendant(s) deny having knowledge or information sufficient thereof to form a belief as to the truth of the allegations contained in paragraphs "3", "4", "5", "6", "7", "8", "9", "10", "11" and "12" of the plaintiff(s) Complaint.

4. Defendant(s) deny the allegations contained in paragraphs "13", "14", "15", "16", "17", "18" and "19" of the plaintiff(s) Complaint.

5. Defendant(s) deny having knowledge or information sufficient thereof to form a belief as to the truth of the allegations contained in paragraph "20" of the plaintiff(s) Complaint.

6. Defendant(s) deny the allegations contained in paragraph "21" of the plaintiff(s) Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

Any injuries and/or damages allegedly sustained by the plaintiff(s), SEAN CARROLL, at the time and place alleged in the Complaint were in whole or in part the result of the culpable conduct of the plaintiff(s).

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The causes of action set forth in the plaintiff(s) Complaint as against the answering defendant(s) are barred by the applicable statute of limitations.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

This Honorable Court lacks jurisdiction over the person of the answering defendant(s).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

This Honorable Court lacks jurisdiction over the person of the defendant(s) due to failure to effect proper service.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

This Honorable Court lacks jurisdiction over the person of the answering defendant(s) due to improper commencement of this action pursuant to CPLR 304.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Any award for recovery of the cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss claimed by the plaintiff(s) shall be reduced to the extent that any such cost or expense was or will with reasonable certainty be replaced or indemnified from any collateral source pursuant to CPLR 4545.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The plaintiff(s) Complaint fails to state a cause of action as against the answering defendant(s).

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Any injuries and/or damages allegedly sustained by the plaintiff(s), SEAN CARROLL, at the time and place alleged in the Complaint was in whole or in part the result of the actions and/or conduct of persons other than the answering defendant(s) and the answering defendant(s) seek the protection afforded under GOL §15-108 et. seq.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

Any injuries and/or damages allegedly sustained by the plaintiff(s), SEAN CARROLL, at the time and place alleged in the Complaint were in whole or in part the result of the actions and/or conduct of the persons other than the answering defendant(s) and that the liability of the answering defendant(s), if any, is fifty percent or less of the total liability and the defendant(s) seek the protection afforded under CPLR §1601, et. seq.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

The plaintiff(s) assumed the risk of any and all liability and injuries allegedly suffered by the plaintiff(s).

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff(s) failed to properly utilize available seat belts.

**AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE**

This action is barred by the provisions of 49 U.S.C. §30106.

WHEREFORE, Defendant(s), ABRAHAM MATHEWS, demand judgment in his favor against the plaintiff(s) dismissing the Complaint of the plaintiff(s) together with costs of suit and fees.

Dated: New York, New York  
November 1, 2007

Stockschlaeder, McDonald & Sules,  
P.C., Esqs.  
Attorneys for Defendant(s)

By: \_\_\_\_\_  
Richard T. Sules  
161 William Street, 19<sup>th</sup> Floor  
New York, New York 10038  
(212) 608-1911  
File No. 2513

TO: The Law Office of Thomas J. Lavin  
Attorney for Plaintiff  
2980 Bruckner Boulevard  
Bronx, New York 10465  
(718) 829-7400

STATE OF NEW YORK     )  
                              )     ss.:  
COUNTY OF NEW YORK    )

RICHARD T. SULES, being an attorney duly licensed to practice law before all Courts of the State of New York, affirms as follows:

1. I am a member of the firm of Stockschlaeder, McDonald & Sules, P.C., attorneys for defendant(s), herein.

2. I have read the foregoing Answer and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief. As to those matters, I believe them to be true.

3. This verification is made by me and not by defendant since defendant is not presently in the county where my office is located.

4. I make this verification based upon the information contained within the file maintained by our office relating to this matter.

Dated:     New York, New York  
          November 1, 2007

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RICHARD T. SULES

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

\_\_\_\_\_  
SEAN CARROLL,

Plaintiff(s),

-against-

ABRAHAM MATHEWS,

Defendant(s).

X

Index No. 301048/07

AFFIDAVIT OF SERVICE

\_\_\_\_\_  
STATE OF NEW YORK )

:ss.

COUNTY OF NEW YORK)

X

Joyce Lee-Hawkins, being duly sworn, deposes and says:

1. I am over 18 years of age, I am not a party to this action and I reside at Brooklyn, New York.

2. On October 26, 2007 I served the within Answer and by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following:

TO: The Law Office of Thomas J. Lavin  
Attorney for Plaintiff  
2980 Bruckner Boulevard  
Bronx, New York 10465

\_\_\_\_\_  
Joyce Lee-Hawkins

Sworn to before me on  
26<sup>th</sup> day of October, 2007

\_\_\_\_\_  
Notary Public

Richard T. Sules  
Notary Public, State of New York  
No. 02SU4987933  
Qualified in New York County  
Commission Expires October 28, 2009

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VERIFIED ANSWER

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STOCKSCHLAEDER, McDONALD & SULES, P.C.

Attorneys for: Defendant(s)

161 William Street, 19<sup>th</sup> Floor

New York, New York 10038

(212) 608-1911

File No. 2513

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Service of a copy of the within is hereby admitted

Dated:

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PURSUANT TO CPLR 2103(5) PLEASE TAKE NOTICE THAT THIS OFFICE DOES  
NOT ACCEPT SERVICE OF PAPERS BY ELECTRONIC MEANS.